



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY Blue Ridge Regional Office

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO BLACKSBURG COUNTRY CLUB, INC.

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) by the Board to Blacksburg Country Club, Inc., for the purpose of resolving certain alleged violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "BBCCI" means Blacksburg Country Club, Inc., a Virginia corporation, and the owner of the property located at 1064 Clubhouse Road, Montgomery County, Virginia and identified as tax parcel 0170004800. The BBCCI Federal Identification Number is 540536604.
7. "DGIF" means the Virginia Department of Game and Inland Fisheries, a state agency organized under the Secretary of Natural Resources.

8. "USFWS" means the United States Fish and Wildlife Service, a federal agency organized under the Department of the Interior.
9. "BRRO" means the Blue Ridge Regional Office of DEQ, located in Roanoke, Virginia.
10. "Regulation" means the Virginia Pollutant Discharge Elimination System Permit Regulation, 9 VAC 25-31-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. A pollution complaint (IR # 2008-W-0005) was received by the Department on July 10, 2007. The complaint indicated that a fish kill had occurred and was continuing to occur on the North Fork of the Roanoke River.
2. In response to the pollution complaint, Department staff conducted an investigation on July 10, 2007 and subsequent days. Investigators examined the operations at the BBCCI because of its location relative to the fish kill and discovered that there had been a discharge of an unknown substance to the North Fork of the Roanoke River, which apparently resulted in the fish kill.
3. The investigation identified a species listed on the endangered species list among the species lost in the fish kill, the Roanoke Logperch (*Percina rex*), causing the USFWS to join in the investigation.
4. A USFWS Special Agent conducted an interview of BBCCI employees. These employees told USFWS Special Agent that there had been an accidental overflow of chemicals from a sprayer and that while they did not realize it at the time, further investigation led them to believe these chemicals may have migrated into the North Fork of the Roanoke River.
5. The BBCCI employees stated that on the afternoon of July 9, 2007, an employee was filling a 150 gallon sprayer on the concrete wash pad owned and operated by BBCCI and located adjacent to the North Fork of the Roanoke River. The sprayer has a basket/strainer located on the top. The employee placed concentrated chemicals into the basket/strainer and then began filling the sprayer with water to dilute its concentration for application.
6. The BBCCI employee placed a combination of three chemicals into the sprayer; Chipco Signature (dry fungicide), Syngenta Daconil ZN (liquid fungicide), and Syngenta Primo Maxx (liquid plant growth inhibitor).
7. The BBCCI employee walked to an adjacent building while the sprayer was filling and returned approximately two minutes later to find the overflow of water and concentrated chemicals.

8. BBCCI employees suspect that once the water was turned on to fill the sprayer, the dry chemicals "congealed" and created a blockage that caused the concentrated chemicals and water to spill out of the basket/strainer and onto the concrete wash pad.
9. The BBCCI employee sprayed down the sprayer and concrete pad with water and this 'wash' water flowed into an underground pipe located behind the concrete pad, and was discharged directly to the North Fork of the Roanoke River. The existence of the underground pipe was unknown to BBCCI management.
10. Code § 62.1-44.5.A states that: "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses."
11. 9 VAC 25-31-50.A of the Regulations states that "Except in compliance with a VPDES permit, or another permit, issued by the board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses."
12. A review of Department files indicates that the BBCCI does not have a permit to discharge to state waters from the underground pipe that was located behind the concrete pad before this incident and therefore BBCCI discharged to state waters without a permit in violation of the referenced sections of the Code and Regulations.
13. Code § 62.1-44.5.B states that "Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act."
14. 9 VAC 25-31-50.B of the Regulations states that "Any person in violation of 9VAC25-31-50.A, who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters; or who discharges

or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section shall notify the department of the discharge, immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge.”

15. A review of Department files indicates that the BBCCI did not report the discharge to state waters from the underground pipe that was located behind the concrete pad to the Department as required in the Code and the Regulations because it was unaware of the discharge or its effects until visited by the USFWS and DEQ inspectors, which occurred less than 24 hours after the discharge occurred.
16. On July 10, 2007, Department staff collected water samples downstream of the underground pipe discharge point. The location of the water sample collection point was the North Fork of the Roanoke River at Clubhouse Road. This is the point at which the river leaves BBCCI property. Department staff handled the collected samples according to the Department's chain-of-custody protocol.
17. On July 11, 2007, Department staff received approval to ship the collected samples to the Commonwealth's laboratory in Richmond for analysis.
18. Upon learning of the discharge, the BBCCI took immediate measures to address the situation and to eliminate the likelihood of a recurrence in the future such as: (i) completed the capping of the underground pipe formerly located behind the concrete wash pad; (ii) reviewed and modified all policies and procedures related to spraying chemicals to ensure that sprayers are no longer filled in a location where an accident could impact the North Fork of the Roanoke River; and (iii) cooperated fully with the staff of the Department, the DGIF, and the USFWS in their investigation of this matter.
19. On July 30, 2007, the Department received the results of the analytical analysis of the water samples collected on July 10, 2007. The analysis detected the presence of Chlorothalonil. Chlorothalonil is one of the active ingredients in Daconil ZN, a chemical being added to the sprayer at the time of the spill and the discharge to state waters.
20. A review of the Material Safety Data Sheet (“MSDS”) provided to the Department by the manufacturer (via website) of the Daconil ZN indicates that in certain doses, the chemical is “very toxic to aquatic organisms.....may cause long-term adverse effects in the aquatic environment”. A review of the MSDSs for the other two chemicals added to the sprayer indicates that they are also toxic to fish and other aquatic organisms but at a much higher concentration than Daconil ZN. The MSDSs also indicate that in the event of a spill, containment and absorption of the spill is recommended to avoid impacts to surface water.

21. BBCCI's discharge of the aforementioned chemicals to the North Fork of the Roanoke River caused the fish kill.
22. The investigation of the fish kill by Department staff, DGIF staff, and USFWS indicates that approximately 1.4 miles of the North Fork of the Roanoke River was affected by this incident. The fish kill is estimated to be at least 10,335 fish of various species including Roanoke Logperch, a listed endangered species, which has made a documented recovery since it was first listed. Roanoke Logperch losses are estimated to be 169 individual fish.
23. On August 8, 2007, the Department issued Notice of Violation W2007-08-001 to BBCCI for the aforementioned violations.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code §§62.1-44.15(8a) and (8d) and upon consideration of Va. Code § 10.1-1186.2, the Board orders BBCCI, and BBCCI agrees to perform the actions described below and in Appendix A of this Order. In addition, the Board orders BBCCI, and BBCCI voluntarily agrees to pay a civil charge of TWENTY FIVE THOUSAND SEVEN HUNDRED FORTY DOLLARS (\$25,740.00) in settlement of the violations cited in the August 8, 2007 Notice of Violation and this Order to be paid as follows.

1. BBCCI shall pay TWO HUNDRED FIFTY SEVEN AND 40/100 DOLLARS (\$257.40) of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

The payment shall include BBCCI's Federal Identification Numbers (FIN) and shall state either on a transmittal letter or as a notation on the check or money order that the payment is submitted pursuant to this Order.

2. In addition, BBCCI shall provide 2 separate checks payable to "Treasurer of Virginia", one check for the amount of \$5,491.86 to cover the costs of the Department's fish kill investigation. BBCCI shall also provide a check in the amount of \$5,073.45 to cover the costs of DGIF's fish kill investigation and fish replacement costs. BBCCI shall pay these costs within 30 days of the effective date of the Order.

3. BBCCI shall satisfy TWENTY FIVE THOUSAND FOUR HUNDRED EIGHTY-TWO AND 60/100 DOLLARS (\$25,482.60) of the civil charge upon completing the Supplemental Environmental Projects ("SEPs") described in Appendix A of this Order.

4. The net project cost of the SEPs to the BBCCI shall not be less than the amount set forth in Paragraph D.2. If it is, BBCCI shall pay the remaining amount in accordance with Paragraph D. 1 of this Order, unless otherwise agreed to by the Department. "Net project costs" means the net present after-tax cost of the SEP, including tax savings, grants and first-year operation cost reductions or other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

5. By signing this Order BBCCI certifies that they have not commenced performance of the SEPs before DEQ identified the violations in this Order and approved the SEPs.

6. BBCCI acknowledges that it is solely responsible for completing the SEP projects. Any transfer of funds, tasks, or otherwise by BBCCI to a third party, shall not relieve BBCCI of its responsibility to complete the SEPs as contained in this Order.

7. In the event it publicizes the SEP or the SEP results, BBCCI shall state in a prominent manner that the projects are part of a settlement for an enforcement action.

8. The Department has the sole discretion to:

- a. Authorize any alternate SEP proposed by BBCCI; and
- b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

9. Should the Department determine that BBCCI has not completed the SEPs, or the authorized alternate SEPs, in a satisfactory manner; the Department shall so notify BBCCI in writing. Within 30 days of being notified, BBCCI shall either complete the SEPs or the authorized alternative SEPs in a satisfactory manner or pay the amount specified in Paragraph 2 above as provided in Paragraph 1 above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of BBCCI, for good cause shown by BBCCI, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein and in

the August 8, 2007 Notice of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.


3. For purposes of this Order and subsequent actions with respect to this Order, BBCCI consents to its entry in an effort to avoid litigation (administrative and judicial) and admits the jurisdictional allegations in this Order, but does not admit the factual allegations or legal conclusions contained herein. The Board, DEQ and BBCCI agree that the actions undertaken by BBCCI in accordance with this Order do not constitute an admission of any liability by BBCCI. BBCCI does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the Findings of Fact and Conclusions of Law contained in Section C of this Order.
4. BBCCI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BBCCI declares that it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and the State Water Control Law, Va. Code § 62.1-44.2 *et seq.* and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and agrees to waive any objection to, or appeal from, the entry of this Order. Nothing herein shall be construed as a waiver of any rights to any administrative proceeding for, or judicial review of, any actions taken by the Board to enforce this Order.
6. Failure by BBCCI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of any alleged non-compliance with this Order. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority for any future alleged violations by BBCCI.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BBCCI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. BBCCI shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BBCCI shall notify the BRRO Regional Director in writing when circumstances are anticipated to occur,

are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the BRRO Regional Director within seventy-two hours of learning of any condition above, which BBCCI intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BBCCI. This Order shall continue in effect until: a) BBCCI petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of this Order or, b) the Director or Board terminates the Order in his or its sole discretion upon 30 days notice to BBCCI, whichever occurs earlier. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BBCCI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. The undersigned representative of BBCCI certifies that he is authorized to enter into the terms and conditions of this Order and to execute and legally bind BBCCI to this document. Any documents to be submitted pursuant to this Order shall also be submitted by BBCCI or an individual authorized by BBCCI.

12. By the signature of the authorized official below, BBCCI voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 28th day of APRIL, 2009.



Steven A. Dietrich, Regional Director
Blue Ridge Regional Office
Department of Environmental Quality

The BBCCI voluntarily agrees to the issuance of this Order.

By: 
Mr. Jeffery K. Mitchell, President

Commonwealth of Virginia

City/County of Montgomery

The foregoing document was signed and acknowledged before me this 20th day of February, 2009, by Mr. Jeffery K. Mitchell, on behalf of the Blacksburg Country Club, Inc.

 # 7201190
Notary Public

My commission expires: 7-31-2012

APPENDIX A – Supplemental Environmental Projects (“SEPs”)

BBCCI shall perform the SEPs identified below in the manner specified in this Appendix.

1. The SEPs to be performed by BBCCI are as follows:
 - Create a Nutrient Management Plan (“NMP”) for the golf course and surrounding grounds. The implementation of this project within the Roanoke River Watershed will improve water quality by reducing the risk of the release of large quantities of nutrients from the Country Club into the North Fork of the Roanoke River. The SEP demonstrates innovation because it creates a standard for similar businesses to follow. There are more than a dozen golf courses within a 50 mile radius of this facility and none have a nutrient management plan in place.
 - Construct a building for storage of the chemicals and pesticides used to treat the golf course property. The storage building shall be used exclusively for the storage of these materials. The pesticide storage building will be constructed with spill containment. The floor will be surrounded with internal curbing to make the door and all walls spill containing.
 - Construct a series of containment pads to collect potentially hazardous liquids. One containment pad will protect the area from unpermitted discharges from chemical spill or overflow. Another containment pad will protect the area from unpermitted discharges due to the rupture of fuel tanks, used oil tanks, or overflow from the fueling of maintenance vehicles.
2. The SEPs shall be completed within 36 months of the effective date of the Order.
3. BBCCI shall submit progress reports on the SEPs on a semi annual basis, due the 10th day of January and July. The report shall report on the progress of the SEPs during the previous six months.
4. BBCCI shall submit a written final report on the SEPs, verifying that the SEPs have been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. BBCCI shall submit the final report and certification to the Department within 37 months of the effective date of the Order.
5. If the SEPs have not or cannot be completed as described in the Order, BBCCI shall notify DEQ in writing no later than 24 months of the effective date of the Order. Such notification shall include:
 - a. An alternate SEP proposal, or
 - b. Payment of the amount specified in Paragraph D.2 as described in Paragraph D.1.

6. BBCCI hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.
7. BBCCI shall submit to the Department written verification of the final overall and net project cost of the SEPs in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 30 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual final net costs or the projected net costs if such projected net costs statement is accompanied by a CPA certification or certification from BBCCI's Chief Financial Officers concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.
8. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

Jerry Ford, Jr., Enforcement Specialist-Senior
Department of Environmental Quality
Blue Ridge Regional Office
3019 Peters Creek Road
Roanoke, VA 24019